IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.154 OF 1999
IN
SUIT NO.2016 OF 1993

Sanjay Ghildayal,
E-9/102, Poonam Nagar,
Andheri (East), Mumbai. .. Appellant
(Orig.Defendant)

v/s.

Jindal Drilling Industries,
408, Balarama, Bandra Kurla
Complex, Bandra (East),
Mumbai-400 051. .. Respondent
(Orig.Plaintiff)

ALONGWITH

CROSS APPEAL/OBJECTIONS (LODGING) NO.3 OF 1999

Sanjay Ghildayal,
E-9/102, Poonam Nagar,
Andheri (East), Mumbai. .. Appellant
(Orig.Defendant)

v/s.

Jindal Drilling Industries,
408, Balarama, Bandra Kurla
Complex, Bandra (East),
Mumbai-400 051. .. Respondent
(Orig.Plaintiff)

Mr.S.G.Bhandary i/by M/s. Bhandary & Bhandary for

Mr.H.N.Kore for respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 18th October, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

The appeal as well as cross-objections are directed against the judgment and decree dated 24t

July, 1998 passed by the learned trial Judge of this court. Briefly stated the facts that give rise to the appeal as well as cross-objections are thus-

The respondent in the appeal is the plaintiff and the appellant is the defendant. We shall refer to the parties title in the suit. The plaintiff filed the suit before this court for decree against the defendant in the sum of Rs.3,55,000/- with interest thereon at 18% per annum from the date of the filing of the suit until realisation. The plaintiff is a company incorporated under the Companies Act and interalia it carries on offshore drilling work. The defendant was employed by the plaintiff as an Assistant Driller. The work of the defendant as Assistant Driller was found satisfactory and the plaintiff desired to consider the defendant for the post of Driller provided he completed the training of 7 days. By the internal message dated 2nd July, 1990, the defendant was informed that he was being considered for the post of Trainee Driller by the plaintiff and to promote him to driller level, he had to undergo training in ONGC Training School. The training dates were from 4.8.1990 to 10.8.1990. Interalia, in the said internal message, the defendant was informed that

before sending him to training in ONGC Training School, he will have to enter into an agreement with the plaintiff that he would serve the organisation for a minimum period of two years and that he would have to furnish surety bond. On 16th July, 1990, the defendant executed the service agreement cum indemnity bond. The said indemnity bond recorded the undertaking on the part of the defendant to pay a sum of Rs.2,00,000/- to the plaintiff in the event of defendant leaving the employment in his own accord before the expiry of the period of two years from the date thereof. After the service cum indemnity bond was executed by the defendant, he was sent to ONGC, Dehra Dun by the plaintiff for the training from 4.8.1990 to 10.8.1990. The defendant appears to have completed the training at Dehra Dun successfully and continued to work as Driller. By the appointment letter dated 6.1.1992, it was recorded that the defendant was appointed as Driller at and from 27.12.1991. The said letter recorded that the indemnity bond executed by the defendant on 16th July, 1990 was to be effective from the date of his joining as Driller for a period of two years and the appointment is to be effective from the date he joined duty but not later than 27th December, 1991. The defendant worked with the plaintiff until 19th May, 1993 and then left the plaintiff's job. The

plaintiff constrained thereby filed the suit seeking decree in the sum of Rs.3,55,000/- against the defendant. The claim of the plaintiff in the sum of Rs.3,55,000/- against the defendant comprises of the particulars viz. (i) Rs.2,00,000/- for breach of contract; (ii) Rs.1,00,000/- expenses incurred for training to the defendant; (iii) Rs.50,000/- expenses incurred by way of emergency and additional expenses for the services of Italian national and (iv) Rs.5000/- for extra remuneration paid to Mr.Date for over time work. According to the plaintiff, the defendant committed breach of the service agreement cum indemnity bond dated 16th July, 1990 by leaving the employment of the company much before the expiry of two years of service as Driller effective from 27.12.1991.

2. The defendant traversed the plaintiff's claim and denied that he left the service as Driller in breach of service agreement cum indemnity bond. According to the defendant, the condition under the service agreement cum indemnity bond was that the defendant would serve the plaintiff after his return from ONGC training for at least two years. The defendant averred that he was promised by the plaintiff that immediately after the 7 days training he would be appointed by the plaintiff

initially as trainee Driller and thereafter as a Driller. The defendant set up the case that he had worked for two years from the date of service agreement cum indemnity bond that was executed by him on 16th July, 1990 and that the claim of the plaintiff was misconceived and perverse.

3. On 30th October, 1998, the learned trial Judge framed eight issues and after recording the evidence, by his judgment and decree dated 24th August, 1998, the learned Judge decreed plaintiff's suit for Rs.2,02,000/- with interest at the rate of 12% per annum from the date of the suit and the remaining claim was declined. The defendant has preferred this appeal whereby the plaintiff's suit has been decreed for Rs.2,02,000/- with interest at the rate of 12% per annum from the date of the suit while the plaintiff has preferred cross-objections aggrieved by partial rejection of the claim in the suit.

4. We heard the learned counsel for the parties and perused the pleadings and the evidence on record and also the impugned judgment.

5. Exhibit D-1 is the internal message dated 2nd July, 1990 whereby the plaintiff on the assessment of defendant's performance offered to promote him

to driller level provided he underwent training in ONGC Training School at Dehra Dun in the terms and conditions set out therein. Exhibit 'D-1' reads thus-

"Dated 02.07.90

On the basis of your performance you are being considered for the post of Trainer Driller in JDIL. In order to promote to Driller level you have to undergo training in ONGC Training School at Dehra Dun. You are requested to send a copy of your Bio-Data for the same purpose. The Training dates are from 04.08.90 to 10.08.90.

Training, travel and stay expenses at Dehra Dun will be born by JDIL.

Your promotion will be subjected to the acceptance by you of the following terms and conditions:

1. When appointed to the post of Trainee Driller you will be paid Rs.10,000/- P.M. in a proper scale. After you complete 3 working hitches successfully and efficiently your salary will be raised to Rs.12,000/- P.M. 1.

2. Before sending you to Training in ONGC Training School you will have to enter into an agreement with JDIL that you will serve the organisation for a minimum period of two years. In case you leave the organisation before 2 years you have to deposit an amount of Rs. Two Lacs to JDIL. All the terms and conditions will have to be on a Surety Bond.

3. Your appointment to the post of Driller will be subjected to after you complete this training successfully and approval of your promotion to driller by ONGC Bombay.

4. After completion of 6 months as Independent Driller your Salary will be raised to Rs.14,000/- P.M.

In case you agree to the above terms and conditions for your promotion to Driller post, send your acceptance as soon as possible so that we can book your seats for Dehra Dun."

6. Pursuant to the aforesaid internal message, the defendant executed the service agreement cum indemnity bond (Exhibit 'P4'). The service agreement cum indemnity bond dated 16th July, 1990 reads thus-

"SERVICE AGREEMENT CUM INDEMNITY BOND

This SERVICE AGREEMENT CUM INDEMNITY BOND executed at Bombay on this 16th day of July One Thousand Nine Hundred Ninety.

BETWEEN:

Mr.Sanjay Ghildiyal son of Shri. K.M.Ghildiyal resident of 5, Patel Road, Dehradun (UP) hereinafter called the party of the FIRST PART (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors and administrators of the one part. AND JINDAL DRILLING & INDUSTRIES LTD. a Company registered under Companies Act, 1956 with registered office at "PIPE HOUSE", 56, Hanuman Road, New Delhi 110 001 and an office at 508, "BALARAMA", Bandra Kurla Complex, Bandra (East), Bombay 400 051, hereinafter called the party of the SECOND PART (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the other part.

WHEREAS the party of the FIRST PART has been working as Asstt.Driller on Rig "PERRO NEGRO 3" on contract basis and the party of the SECOND PART has decided to consider the party of the FIRST PART for a regular appointment as Driller in view of the past experience and the performance of the party of the FIRST PART, after training and trial as Driller on such terms and conditions as may be mutually agreed upon.

AND WHEREAS the party of the SECOND PART has decided to make arrangement for imparting training in professional skill to the party of the FIRST PART and that party of the SECOND PART has decided to bear all expenses pertaining to the training.

AND WHEREAS the party of the FIRST PART has willingly agreed to avail of the training facility arranged by the party of the SECOND PART and the party of the FIRST PART will be greatly benefitted by the training so arranged.

AND WHEREAS the party of the FIRST PART has willingly agreed to execute an indemnity bond in favour of the party of the SECOND PART and has agreed to continue to serve the party of the SECOND PART in the capacity of Driller or in any other capacity as may be mutually agreed upon for a period of two years from the date of appointment that may be issued after successful completion of training on following terms and conditions:

This SERVICE AGREEMENT CUM INDEMNITY BOND WITNESSETH as follows:

1) That the party of the FIRST PART will undertake to serve the party of the SECOND PART as a Driller on the terms and conditions as may be set out in the letter of appointment that may be issued after successful completion of training for a period of 2 years from the date of appointment.

2) That the party of the FIRST PART agrees to furnish a personal Surety Bond in favour of the party of the SECOND PART for a sum of Rs.2 Lakhs (Rupees Two Lakhs Only) duly supported by a Guarantee Bond of similar amount from any General Insurance Company at the cost of the party of the FIRST PART. Alternatively the party of the FIRST PART hereby authorises the party of the SECOND PART to deduct a sum equivalent to Ten percent of the Gross Salary paid by the party of the SECOND PART to the party of the FIRST PART as Security Deposit without interest.

3) That the party of the FIRST PART hereby undertakes to indemnify and keep indemnified the party of the SECOND PART to the extent

of Rs.2 Lakhs (Rupees Two Lakhs Only)

4) That the party of the FIRST PART hereby undertakes to pay the sum of Rs.2 Lakhs (Rupees Two Lakhs Only) to the party of SECOND PART in the event of the party of the FIRST PART leaving the employment on his own accord before the expiry of the period of Two years from the date hereof.

5) That the party of the SECOND PART reserves its right to recover all expenses incurred by the party of the SECOND PART in connection with training arranged for the benefit of the party of the FIRST PART and is not found to be discharging his duties and responsibilities diligently and to the entire satisfaction of the party of the SECOND PART or for any reason whatsoever and that the party of the SECOND PART further reserves its right to claim from the party of the FIRST PART damages to the extent of a sum not exceeding Rs.2 Lakhs (Rupees Two Lakhs Only) being the amount of indemnity hereby Rs.2 Lakhs- (Rupees Two Lakhs Only) being the amount of indemnity hereby executed by the party of the FIRST PART in favour of the SECOND PART.

6) That the party of the FIRST PART hereby agrees to abide by the existing terms and conditions of the employment or such terms and conditions as may be set forth by the party of the SECOND PART after successful completion of training.

That the party of the FIRST PART further agrees to not to divulge or pass on or impart any professional skill to any other person or persons whatsoever without written consent of the party of the SECOND PART and any contravention of this condition will be treated as wilful damage to the party of the SECOND PART and in such an event party of the SECOND PART will be entitled to invoke the indemnity executed herein by the party of the FIRST PART in favour of the SECOND PART."

7. It is not in dispute that after the execution of the service agreement cum indemnity bond, the defendant was sent for training to ONGC Training

School and the defendant successfully completed the said training from 4th August, 1990 to 10th August, 1990. Upon completion of training, the defendant continued to be in employment of the plaintiff and left the service of the plaintiff somewhere from 20th May, 1993. The principal question that falls for determination is whether by leaving the employment from 20th May, 1993, the defendant can be said to have committed breach of service agreement cum indemnity bond.

8. We have already referred to the internal message dated 2nd July, 1990 that preceded the execution of service agreement cum indemnity bond. What it provides is that the defendant shall be considered for promotion to Driller level if he underwent training in ONGC Training School, Dehra Dun (the training period being from 4th August, 1990 to 10th August, 1990) and his entering into an agreement with the plaintiff that he would serve the plaintiff for a minimum period of two years. The appointment to the post of Driller was subject to the successful training from 4th August, 1990 to 10th August, 1990 and approval by ONGC, Mumbai. Pertinently, the said communication dated 2nd July, 1990 requires the defendant serving the plaintiff for minimum period of two years. The internal message does not say that the defendant shall serve

the plaintiff for a minimum period of two years from the date he is appointed as Driller. What was conveyed to the defendant though the internal message dated 2nd July, 1990 is clearly reflected from clause 4 of service agreement cum indemnity bond. It provides that in the event of the defendant's leaving the employment on his own accord before the expiry of a period of two years from the date thereof, the defendant undertakes to pay a sum of Rs.2,00,000/- to the plaintiff. The expression, 'leaving the employment on his own accord before the expiry of the period of two years from the date hereof' in clause 4 is unambiguous and leads to the unmistakable conclusion that the period of two years mentioned is to commence from the date of execution of service agreement cum indemnity bond i.e. 16th July, 1990. Clause 1 of the service agreement cum indemnity bond provides that the defendant will undertake to serve the plaintiff as a Driller on the terms and conditions as may be set out in the appointment letter that may be issued after successful completion of training for a period of two years from the date of appointment. This clause is full of ifs and buts. It is not certain as to whether at all on successful completion of the training at ONGC School, the defendant shall be issued a letter of appointment appointing him on the post of Driller.

The terms and conditions of such appointment are also uncertain. It was never intended in the service agreement cum indemnity bond nor it could be so held that after successful completion of training at ONGC Training School, even if no order of appointment appointing the defendant as Driller is issued for years together though the defendant continues to be in the employment of the plaintiff, the indemnity given by the defendant to serve for a period of two years would only commence from the date the order appointing the defendant as Driller is made effective. Rather, from the service agreement cum indemnity bond it is abundantly clear that the defendant is liable to pay a sum of Rs.2,00,000/- to the plaintiff in the event he leaves the plaintiff's employment on his own accord before the expiry of the period of two years from the date of the execution of service agreement cum indemnity bond. The defendant completed the training period successfully on 10th August, 1990. He continued to be in employment of the plaintiff after completion of the said training. However, by the letter dated 6th January, 1992 (Exhibit P-5), it was intimated to the defendant that the plaintiff had decided to offer him the post of Driller for their offshore rig Perro Meegro-3 on the terms and conditions of the employment enclosed therewith and that the indemnity bond executed by

the defendant on 16th July, 1990 shall be effective from the date of defendant's joining as Driller for a period of two years. It also recorded that the appointment was effective from the date the defendant joining duty but not later than 27th December, 1991. Before the issuance of the letter dated 6th January, 1992, the defendant was already deployed as Driller for the aforesaid offshore rig. The clause inserted in the appointment letter dated 6th November, 1992 that the indemnity bond executed by the defendant on 16th July, 1990 shall be effective from the date of the defendant's joining as Driller for a period of two years apparently was not acceptable to the defendant. Admittedly he did not accept the terms and conditions of the employment that the bond was to be effective from the date of his joining as Driller for a period of two years. The defendant did not sign the endorsement already typed on the appointment letter Exhibit P-5. Having considered the clauses of the service agreement cum indemnity bond, we have no hesitation in holding that the defendant cannot be said to have breached the terms of the said agreement.

9. The finding of the learned trial Judge that the clauses 1 and 4 of the service agreement cum indemnity bond coupled with the fact that there was

only one appointment letter dated 6th January, 1992 proves the case of the plaintiff that the period of two years of the bond commenced or started not from the date of execution of the bond but from the date of appointment i.e. 27th December, 1991, is erroneous. The learned trial Judge has not correctly construed clauses 1 and 4 of the service agreement cum indemnity bond. We are also unable to concur with the view of the learned trial Judge that even if the defendant refused to accept the appointment letter (Exhibit P5), the terms and conditions were acceptable to him and that he had accepted those terms and conditions. As already noticed by us that the defendant had refused to accept the appointment letter (Exhibit P5). Having refused to accept the terms and conditions set out in Exhibit P5, we are unable to fathom the view of the learned trial Judge that even if the defendant refused to accept the appointment letter (Exhibit P5), the terms and conditions were acceptable to him and that he had accepted the said terms.

10. The learned trial Judge was right when he observed that the entire case of the plaintiff was based on Exhibit P4 but having observed that the learned Judge misdirected himself in holding that the service agreement cum indemnity bond did not commence from 16th July, 1990 and it commenced from

27.12.1991. We have already indicated the reasons therefor and without repeating the same, we hold that service agreement cum indemnity bond commenced from 16th July, 1990 and not from 27th July, 1990 as held by the learned trial Judge.

11. Incidentally, we may notice that the learned trial Judge did not believe the case of the plaintiff that the defendant was to undergo training of 18 months. The only natural consequence that follows is that the training that the defendant was to undergo was of 7 days. That is also clear from the internal message. What was required of the defendant to serve the plaintiff for a period of two years from the date of execution of service agreement cum indemnity bond.

12. There is absolutely no case as regards the claim made by the plaintiff towards expenses incurred for specialised training of the defendant and the claim of Rs.50,000/- expenses said to have been incurred by the plaintiff for emergency and additional expenses incurred for the services of Italian national.

13. In the result, appeal succeeds and the judgment and decree passed by the learned trial Judge dated 24th July, 1998 is set aside. The

cross-objections fail. The plaintiff's suit is dismissed with no order as to costs.

14. We direct the respondent-plaintiff to restitute the amount withdrawn by them pursuant to the order dated 17th February, 1999 within four weeks from today, failing which the appellant-defendant shall be at liberty to invoke the bank guarantee furnished by the respondent-plaintiff pursuant to the order dated 17th February, 1999. In the event of the respondent-plaintiff restituting the amount so withdrawn within the aforesaid time, the bank guarantee furnished by the respondent-plaintiff pursuant to the order dated 17th February, 1999 shall stand discharged.

15. Oral prayer for stay is rejected.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)